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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/680,240	10/08/2003	Darwin Eton	4052-112	5834
23117	7590	10/17/2005	EXAMINER	
NIXON & VANDERHYE, PC			PRONE, CHRISTOPHER D	
901 NORTH GLEBE ROAD, 11TH FLOOR			ART UNIT	
ARLINGTON, VA 22203			PAPER NUMBER	

3738

DATE MAILED: 10/17/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/680,240

Applicant(s)

ETON, DARWIN

Examiner

Christopher D. Prone

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 July 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4, 7-12 and 15-17 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4, 7-12 and 17 is/are rejected.
- 7) ☒ Claim(s) 15 and 16 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) ☐ Notice of References Cited (PTO-892) | 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) ☐ Notice of Informal Patent Application (PTO-152) |
| 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) ☐ Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 7/13/05 has been entered.

Specification

The use of the trademark [DACRON] has been noted in this application. It should be capitalized wherever it appears and be accompanied by the generic terminology.

Although the use of trademarks is permissible in patent applications, the proprietary nature of the marks should be respected and every effort made to prevent their use in any manner, which might adversely affect their validity as trademarks.

Correction is required. See MPEP § 608.01(b).

Claim Objections

Claim 1 is objected to because of the following informalities: ambiguous language. Line 12 recites the phrase: "said inner wall is formed", which should be

amended to read, "said inner graft wall" for further clarity. Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.

Claim 8 contains the trademark/trade name [DACRON]. Where a trademark or trade name is used in a claim as a limitation to identify or describe a particular material or product, the claim does not comply with the requirements of 35 U.S.C. 112, second paragraph. See *Ex parte Simpson*, 218 USPQ 1020 (Bd. App. 1982). The claim scope is uncertain since the trademark or trade name cannot be used properly to identify any particular material or product. A trademark or trade name is used to identify a source of goods, and not the goods themselves. Thus, a trademark or trade name does not identify or describe the goods associated with the trademark or trade name. In the present case, the trademark/trade name is used to identify/describe a polyester material and, accordingly, the identification/description is indefinite.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(e) The invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claim 17 is rejected under 35 U.S.C. 102(e) as being anticipated by McDermott et al (USPN 6,312,462).

With reference to Figures 1 and 2, McDermott discloses an endovascular device 10 for bridging a region of a blood vessel comprising a first, outer graft wall structure 36, said outer graft wall 36 is expandable (3:7-28) to conform to an interior shape the vessel in which it is deployed. The device further comprises an inner graft wall structure 34, having proximal and distal ends, formed of a flexible elastic polytetrafluoroethylene material that is expandable, and a means 38 for solidifiable fluid to flow to an area 32 between said outer graft wall structure 36 and inner graft wall structure 34, thereby expanding said outer graft wall and spacing said outer graft wall from said inner graft wall (4:1-27). Means 38 may comprise a catheter in communication with a space 32 between said inner and outer graft walls and sealed with respect to said inner and outer graft walls for selectively filling said space (4:1-27). McDermott further provides the method of repairing of an aneurysmic region of a blood vessel with an endovascular device.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-4 and 7-12, are rejected under 35 U.S.C. 103(a) as being unpatentable over McDermott in view of Yannas (USPN 4,902,289).

With reference to Figures 1 and 2, McDermott discloses an endovascular device 10 for bridging a region of a blood vessel comprising a first, outer graft wall structure 36 having proximal and distal ends, said outer graft wall structure 36 being formed of a flexible, elastic polytetrafluoroethylene material that is expandable (3:7-28) to conform to an interior shape the vessel in which it is deployed. The device further comprises an inner graft wall structure 34 having proximal and distal ends, at least one stent structure (5:65-6:15) secured to at least one of said inner and outer wall structures for supporting and securing the device to the vessel, and a means 38 for solidifiable fluid to flow to an area 32 between said outer graft wall 36 and inner graft wall 34, thereby expanding said outer graft wall structure and spacing said outer graft wall structure from said inner graft wall structure (4:1-27). With reference to Figures 8 and 9 the stent structures are provided adjacent proximal and distal ends of said respective walls. Means 38 may comprise a catheter in communication with a space 32 between said inner and outer graft walls and sealed with respect to said inner and outer graft walls for selectively filling said space (4:1-27). McDermott further provides the method of repairing of an aneurysmic region of a blood vessel with an endovascular device. The delivery of the outer and inner graft structures are performed simultaneously with the inner wall disposed concentrically within the outer wall.

McDermott, as discussed above, discloses the endovascular graft and method of delivering the graft as claimed. McDermott however fails to disclose that the inner graft wall comprises knitted polyester that is permeable to blood.

Yannas teaches a multi-layer graft with multiple layers (7:43-49) that has a knitted polyester (5:6-13) inner layer that is permeable to blood components (6:25-38) to provide a thromboresistant conduit with mechanical properties that match those of the adjacent natural blood vessel (abstract, 2:7-43).

Therefore in view of the teachings it would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the endovascular graft as disclosed by McDermott by incorporating an inner layer comprising a knitted polyester that is permeable to blood. The motivation is evident because McDermott teaches the use of polymers or hardening agents that harden or gel from exposure to enzymatic conversion or temperature changes and by incorporating the permeable inner graft structure as taught by Yannas, the graft layer will cause more exposure of the hardening agent to the warm blood causing the hardening agents to expand more uniformly enhancing the mechanical properties and further preventing thrombosis.

Response to Arguments

Applicant's arguments with respect to claims 1-4, 7-12, and 17 have been considered but are moot in view of the new ground(s) of rejection.

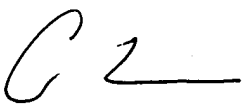
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher D. Prone whose telephone number is (571) 272-6085. The examiner can normally be reached on Monday Through Fri 8:30 to 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Corrine McDermott can be reached on (571) 272-4754. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Christopher D Prone
Examiner
Art Unit 3738

CP
CDP


CORRINE McDERMOTT
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